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INDIGENOUS ENVIRONMENTAL NETWORK
and NORTH COAST RIVERS ALLIANCE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

INDIGENOUS ENVIRONMENTAL
NETWORK and NORTH COAST RIVERS
ALLIANCE,

Plaintiffs,

vs.

PRESIDENT DONALD J. TRUMP,
UNITED STATES DEPARTMENT OF
STATE; MICHAEL R. POMPEO, in his
official capacity as U.S. Secretary of State;
UNITED STATES ARMY CORPS OF
ENGINEERS; LT. GENERAL TODD T.
SEMONITE, Commanding General and
Chief of Engineers; UNITED STATES FISH
AND WILDLIFE SERVICE, a federal
agency; MARGARET EVERSON, in her
official capacity as Acting Director of the

Civil Action No. 4:19-cv-00028-
BMM

**PLAINTIFFS' STATEMENT
OF DISPUTED FACTS**

U.S. Fish and Wildlife Service; UNITED STATES BUREAU OF LAND MANAGEMENT, and DAVID BERNHARDT, in his official capacity as U.S. Secretary of the Interior,
Defendants,
TRANSCANADA KEYSTONE PIPELINE, LP, a Delaware limited partnership, and TC ENERGY CORPORATION, a Canadian Public company,
Defendant-Intervenors.

Verbatim Response to TC Energy Corporation and TransCanada Keystone Pipeline, LP's Statement of Undisputed Facts:

1. Plaintiff Indigenous Environmental Network is incorporated under the non-profit organizational name of Indigenous Educational Network of Turtle Island. Amended Complaint ¶ 28 (Doc. 37).

Undisputed.

2. Plaintiff North Coast Rivers Alliance is an unincorporated association. Amended Complaint ¶ 29.

Undisputed.

3. Defendant-Intervenor TC Energy Corporation (formerly TransCanada Corporation) is a Canadian public company organized under the laws of Canada. Corporate Disclosure Statement (Doc. 26).

Undisputed.

4. Defendant-Intervenor TransCanada Keystone Pipeline, LP (“Keystone”) is a limited partnership, organized under the laws of the State of Delaware and owned by affiliates of TC Energy Corporation. *Id.*

Undisputed.

5. Keystone has plans to construct and operate an international oil pipeline called the Keystone XL Project (“Keystone XL”). TransCanada Keystone Pipeline, L.P. Application for Presidential Permit for the Keystone XL Pipeline Project (Jan. 26, 2017) at 1 (“Presidential Permit Application”) (attached as Exhibit 1).

Undisputed.

6. Keystone XL will extend from an oil supply hub near Hardisty, Alberta, Canada to the northernmost point of the existing Keystone Pipeline Cushing Extension at Steele City, Nebraska. Presidential Permit Application at 8.

Undisputed.

7. Keystone XL will cross the international border between Saskatchewan, Canada, and the United States near Morgan, in Phillips County, Montana. Presidential Permit Application at 6.

Undisputed.

8. Following the procedure specified in Executive Order 13,337, Keystone submitted an application to the Secretary of State on September 19, 2008

requesting authorization to construct, operate and maintain the Keystone XL pipeline and ancillary facilities at the United States-Canada border in Phillips County, Montana. Presidential Permit Application at 2.

Undisputed.

9. On January 18, 2012, the President denied Keystone's application. Presidential Permit Application at 2.

Disputed, as the President, "in furtherance of Executive Order 13337 of April 30, 2004" directed the Secretary of State to "submit the report to the Congress . . . and issue a denial of the Keystone XL pipeline permit application." 77 Fed.Reg. 5,679 (Feb. 3, 2012).

10. On May 4, 2012, Keystone submitted a new application to the Secretary of State for authorization to construct, operate and maintain the Keystone XL pipeline and ancillary facilities at the United States-Canada border in Phillips County, Montana. Presidential Permit Application at 3.

Undisputed.

11. On November 3, 2015, the Secretary of State denied the application. Presidential Permit Application at 4.

Undisputed.

12. On January 26, 2017, Keystone submitted an application to the Department of State, pursuant to Executive Order 11,423, as amended, and Executive

Order 13,337, for a presidential permit “authorizing the construction, connection, operation, and maintenance of pipeline facilities for the importation of crude oil, to be located at the international border between the United States and Canada, at Phillips County, Montana (the ‘border crossing facilities’).” Presidential Permit Application at 1.

Disputed as to scope of the application, as it states that “If this application is approved, the Project will allow transportation of crude oil production from the Western Canadian Sedimentary Basin (“WCSB”) and the Bakken supply basin in Montana and North Dakota, to a point located on the existing Keystone Pipeline system at Steele City, Nebraska, which will allow for the delivery of that production to existing refinery markets in the Texas Gulf Coast area.” Presidential Permit Application at 1. (Doc. 79-1, p. 3).

13. On March 23, 2017, the Under Secretary of State for Political Affairs, exercising authority delegated by Executive Order 13,137, the January 24, 2017 Presidential Memorandum Regarding Construction of the Keystone XL Pipeline, and Department of State Delegation of Authority No. 118-2 of January 26, 2016, issued a permit “to construct, connect, operate and maintain facilities at the border of the United States of the United States and Canada at Morgan, Montana, for the import of crude oil from Canada to the United States.” 82 Fed. Reg. 16,467, 16,467 (Apr. 4, 2017).

Disputed as to the scope of the 2017 Permit, which required TC Energy to “take all necessary measures to prevent or mitigate adverse impacts on or disruption of the human environment . . . includ[ing] the actions and obligations agreed to by permittee in the [Construction, Mitigation, and Reclamation Plan] and other mitigation, control plans, and special conditions found in the Final S[upplemental Environmental Impact Statement], including all Appendices as supplemented, all of which are appended to and made part of this permit, or that are approved in the future by the Department or other relevant federal or state agencies” 82 Fed.Reg. 16,467, 16,468 (Apr. 4, 2017).

14. On March 29, 2019, the President issued a new presidential permit for Keystone XL that superseded the Presidential permit that was issued by the Under Secretary of State on March 23, 2017. 84 Fed. Reg. 13,101 (Apr. 3, 2019).

Undisputed.

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Plaintiffs' Additional Facts in Opposition to TC Energy's Motion:

15. The March 29, 2019 Presidential Permit was not based upon any consultation with the Secretary of State, any determination of the National Interest, nor any recommendations by relevant agencies, as required by Executive Order 13,337. 84 Fed. Reg. 13,101 (Apr. 3, 2019).

Dated: February 25, 2020

Respectfully submitted,

PATTEN, PETERMAN, BEKKEDAH &
GREEN, PLLC

s/ James A. Patten
JAMES A. PATTEN

Dated: February 25, 2020

/s/ Stephan C. Volker
STEPHAN C. VOLKER
Attorney for Plaintiffs
INDIGENOUS ENVIRONMENTAL
NETWORK AND NORTH COAST
RIVERS ALLIANCE

CERTIFICATE OF SERVICE

I, Stephan C. Volker, am a citizen of the United States. I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Stephan C. Volker, 1633 University Avenue, Berkeley, California 94703.

On February 25, 2020 I served the following documents by electronic filing with the Clerk of the Court using the CM/ECF system, which sends notification of such filing to the email addresses registered in the above entitled action:

PLAINTIFFS' STATEMENT OF DISPUTED FACTS

I declare under penalty of perjury that the foregoing is true and correct.

s/ Stephan C. Volker

STEPHAN C. VOLKER (Pro Hac Vice)